Supreme Court, U.S.
FILED

No. 05- 05-793 DEC 13 2005

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

JUAN MIGUEL GONZALEZ,

Petitioner,

v.

UNITED STATES,

Respondent.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

---

SCOTT A. SREBNICK
2400 South Dixie Highway
Suite 200
Miami, Florida 33133
(305) 285-9019

Counsel of Record

WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D. C. 20001

QUESTIONS PRESENTED

I. Who bears the burden of persuasion to demonstrate harm, or harmlessness, from a preserved evidentiary error in a criminal case: the defendant or the government?

II. When does a trial court's erroneous exclusion of defense evidence constitute a constitutional violation which triggers the "harmless beyond a reasonable doubt" standard of *Chapman v. California*, 386 U.S. 18 (1967)?

PARTIES TO THE PROCEEDINGS

Petitioner Juan Miguel Gonzalez was a defendant and the appellant below.

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED I

PARTIES TO THE PROCEEDINGS ii

TABLE OF AUTHORITIES v

OPINION BELOW 2

JURISDICTION 2

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED 2

INTRODUCTION 3

STATEMENT OF THE CASE 5

REASONS FOR GRANTING THE WRIT 8

I. THE COURT SHOULD OVERRULE ELEVENTH CIRCUIT PRECEDENT WHICH PLACES THE BURDEN ON CRIMINAL DEFENDANTS TO DEMONSTRATE PREJUDICE FROM PRESERVED EVIDENTIARY ERRORS 9

II. THE COURT SHOULD CLARIFY THAT THE ERRONEOUS EXCLUSION OF RELEVANT AND FAVORABLE DEFENSE EVIDENCE REQUIRES APPLICATION OF THE HARMLESS ERROR STANDARD OF *CHAPMAN v. CALIFORNIA* 13

TABLE OF CONTENTS – Continued

Page

CONCLUSION 21

APPENDICES

APPENDIX A:

Opinion of the Court of Appeals, dated July 13, 2005 ..... 1a

APPENDIX B:

Order of the Court of Appeals Denying Rehearing, dated September 14, 2005 ..... 16a

TABLE OF AUTHORITIES

Page

Cases:

Brady v. Maryland,
373 U.S. 83 (1963) 13, 16

Chambers v. Mississippi,
410 U.S. 284 (1974) 14, 15, 17

Chapman v. California,
386 U.S. 18 (1967) ..... passim

Christopher v. State of Florida,
824 F.2d 836 (11th Cir. 1987),
cert. denied, 484 U.S. 1077 (1988) 13

Clark v. Blackburn,
632 F.2d 531 (5th Cir. 1980) 13

Crumpton v. Confederation Life Ins. Co.,
672 F.2d 1248 (5th Cir. 1982) 12

Delaware v. Van Arsdall,
475 U.S. 673 (1986) 14, 17

Finch v. City of Vernon,
877 F.2d 1497 (11th Cir. 1989) 12

Government of Virgin Islands v. Mills,
956 F.2d 443 (3rd Cir. 1992) 16

Kotteakos v. United States,
328 U.S. 750 (1946) ..... passim

TABLE OF AUTHORITIES – Continued

Page

Nieves-Villanueva v. Soto-Rivera,
133 F.3d 92 (1st Cir. 1997) 12

O'Neal v. McAninch,
513 U.S. 432 (1995) 9, 10, 12

Richmond v. Embry,
122 F.3d 866 (10th Cir. 1997),
cert. denied, 522 U.S. 1122 (1998) 16, 17

Rock v. Arkansas,
483 U.S. 44 (1987) 16

Rogers v. City of Chicago,
320 F.3d 748 (7th Cir. 2003) 12

Smith v. United States,
Case No. 05-724 4

Taylor v. Illinois,
484 U.S. 400 (1988) 14

United States v. August,
984 F.2d 705 (6th Cir. 1992),
cert. denied, 510 U.S. 854 (1993) 19

United States v. Blum,
62 F.3d 63 (2nd Cir. 1995) 18

United States v. Breitweiser,
357 F.3d 1249 (11th Cir.),
cert. denied, 541 U.S. 1091 (2004) 10

TABLE OF AUTHORITIES – Continued

Page

United States v. Burston,
159 F.3d 1328 (11th Cir. 1998) 10

United States v. Byrd,
208 F.3d 592 (7th Cir. 2000) 20

United States v. Cameron,
907 F.2d 1051 (11th Cir. 1990) 10

United States v. Chin,
371 F.3d 31 (2nd Cir. 2004) 20

United States v. Coumaris,
399 F.3d 343 (D.C. Cir. 2005) 19

United States v. Dack,
987 F.2d 1282 (7th Cir. 1993) 11, 12

United States v. Davis,
639 F.2d 239 (5th Cir. 1981) 19

United States v. Dowlin,
408 F.3d 647 (10th Cir. 2005) 16

United States v. Fern,
155 F.3d 1318 (11th Cir. 1998) 11

United States v. Foster,
815 F.2d 1200 (8th Cir. 1987) 19

United States v. Gibson,
675 F.2d 825 (6th Cir.),
cert. denied, 459 U.S. 972 (1982) 19

TABLE OF AUTHORITIES – Continued

Page

United States v. Gochis,
256 F.3d 739 (7th Cir. 2001) 11

United States v. Hilliard,
11 F.3d 618 (6th Cir. 1993),
cert. denied, 510 U.S. 1130 (1994) 19

United States v. Hudson,
970 F.2d 948 (1st Cir. 1992) 19

United States v. Ince,
21 F.3d 576 (4th Cir. 1994) 13

United States v. Izydore,
167 F.3d 213 (5th Cir. 1999) 11, 12

United States v. Lewis,
987 F.2d 1349 (8th Cir. 1993) 19

United States v. Magluta,
418 F.3d 1166 (11th Cir. 2005) 11

United States v. Messner,
107 F.3d 1448 (10th Cir. 1997) 11, 12

United States v. Mitchell,
113 F.3d 1528 (10th Cir. 1997),
cert. denied, 522 U.S. 1063 (1998) 11

United States v. Monroe,
353 F.3d 1346 (11th Cir. 2003) 11

TABLE OF AUTHORITIES – Continued

Page

United States v. Montelongo,
420 F.3d 1169 (10th Cir. 2005) 18

United States v. Montoya,
827 F.2d 143 (7th Cir. 1987) 11

United States v. Mulinelli-Navas,
111 F.3d 983 (1st Cir. 1997) 18

United States v. Munoz,
150 F.3d 401 (5th Cir. 1998),
cert. denied, 525 U.S. 1112 (1999) 11

United States v. Naiden,
424 F.3d 718 (8th Cir. 2005) 19

United States v. Olano,
507 U.S. 725 (1993) 9, 12

United States v. Paguio,
114 F.3d 928 (9th Cir. 1996) 13

United States v. Peak,
856 F.2d 825 (7th Cir.),
cert. denied, 488 U.S. 969 (1988) 20

United States v. Saget,
991 F.2d 702 (11th Cir.),
cert. denied, 510 U.S. 950 (1993) 10

United States v. Sanders,
964 F.2d 295 (4th Cir. 1992) 13

TABLE OF AUTHORITIES – Continued

Page

United States v. Scheffer,
523 U.S. 303 (1998) 16

United States v. Schuler,
813 F.2d 978 (9th Cir. 1987) 13

United States v. Shay,
57 F.3d 126 (1st Cir. 1995) 20

United States v. Stephens,
365 F.3d 967 (11th Cir. 2004) 8, 10, 19

United States v. Todd,
108 F.3d 1329 (11th Cir. 1997) 18

United States v. Turning Bear,
357 F.3d 730 (8th Cir. 2004) 16

United States v. Valenzuela-Bernal,
458 U.S. 858 (1982) 14, 16

United States v. Vaughn,
370 F.3d 1049 (10th Cir. 2004) 11

United States v. Vonn,
535 U.S. 55 (2002) 9, 12

United States v. Watson,
669 F.2d 1374 (11th Cir. 1982) 19

Washington v. Schriver,
255 F.3d 45 (2nd Cir. 2001) 16

TABLE OF AUTHORITIES – Continued

Page

Washington v. Texas,
388 U.S. 14 (1967) 14, 15

Wood v. Alaska,
957 F.2d 1544 (9th Cir. 1992) 17

Zappulla v. New York,
391 F.3d 462 (2nd Cir. 2004),
cert. denied, 126 S.Ct. 472 (2005) 13

Constitution:

Fifth Amendment ..... passim

Sixth Amendment ..... passim

Statutes:

21 U.S.C. § 841(a)(1) 5

21 U.S.C. § 963 5

28 U.S.C. § 1254(1) 2

28 U.S.C. § 2111 9

Rules:

FED. R. CRIM. P. 52(a) 2, 9, 10

FED. R. CRIM. P. 52(b) 9

FED.R.EVID. 103(a) 2, 9